CITY OF SEATTLE

L A W D E P A R T M E N T

ANNUAL REPORT

1940

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ANNUAL REPORT

OF THE LAW DEPARTMENT OF THE CITY OF SEATTLE FOR THE YEAR 1940.

To the Mayor and City Council of the City of Seattle:

Gentlemen: Pursuant to Section 16, Article XXIV of the City Charter, I herewith submit the annual report of the Law Department for the year ending December 31, 1940.

I.

GENERAL STATEMENT OF LITIGATION.

1. Tabulation of Cases:

The following is a general tabulation of suits and other civil proceedings pending in the Superior, Federal and appellate courts during the year 1940:

	Pending Dec. 31, 1939	Commenced during Year 1940	Ended during year 1940	Pending Dec. 31, 1940
Condemnation suits, ...	7	3	5	5
Condemnation suits, supplementary, ...	0	1	1	0
Damages for personal injuries, ...	58	84	63	79
Damages other than for personal injuries, ...	27	24	25	26
Actions relating to collection of assessment rolls,.	0	1	1	0
Injunction suits, ...	13	14	8	19
Mandamus proceedings, ...	19	9	15	13
Miscellaneous proceedings,.	83	45	58	70
Public service proceedings,	1	3	0	4
	208	184	176	216

2. Personal Injury Actions:

	Number	Amt. Involved
Pending December 31, 1939, ...	58	$733,695.88
Commenced since December 31, 1939, ...	84	704,055.88
Total, ...	142	1,437,751.76
Tried and concluded since December 31, 1939, ...	63	526,337.26
Actions pending December 31, 1940	79	911,414.50

Of the personal injury actions pending during the year, 63, involving $526,337.26, were tried and finally disposed of; 31 cases were won outright; in 9 cases involving $88,456.75, the plaintiffs recovered, in the aggregate, $17,125.00. The remaining cases, involving $211,906.06, were settled without trial for $21,094.00.

Of the 84 personal injury actions begun during the year, 61, involving $592,340.48, are based on alleged accidents occurring in connection with the operation of the municipal transit system.

3. Damages other than Personal Injuries:

	Number	Amt. Involved
Pending December 31, 1939, ...	27	$162,391.14
Commenced since December 31, 1939,....	24	6,943.97
Total, ...	51	169,335.11
Tried and concluded since December 31, 1939, ...	25	6,048.66
Pending December 31, 1940, ...	26	163,286.45

Of the total of 51 cases involving damages other than personal injuries, 25 cases involving $6,048.66 were disposed of during the year, of which 18 were won, 5 settled and 2 lost, costing the City in the aggregate only $653.20. $150.00 of this sum was recovered from a co-defendant.

4. Supreme Court:

Fifteen cases were argued in the State Supreme Court, seven were won by the City, seven lost and one modified.

5. Miscellaneous Cases:

Three actions were commenced against the Chief and certain police officers for $23,700.00 for false arrest. Three pending false arrest cases were tried and resulted in verdicts for the defendants.

One case was filed seeking to foreclose a mortgage and the City was compelled to answer to protect its lien upon the property involved. Trial of the case resulted in a judgment for the City.

Twelve cases seeking to quiet title against the City were filed. These cases rise out of efforts to destroy City's lien for local assessments where County has sold property for delinquent taxes.

Eight injunction actions were tried, 5 were won and 3 lost.

Fifteen mandamus actions were tried, 9 were won and 6 lost.

The termination of the bankruptcy of the Pacific States Lumber Company resulted in the collection for the City of $25,000.00.

Five condemnation suits by the Housing Authority of the City of Seattle for the condemnation of housing sites were filed, tried and concluded.

Of 58 miscellaneous cases tried 34 were won by the department.

10 cases for refunds of solid fuel dealers' license fees were settled and adjusted upon the return of $31,332.60.

11 hearings relating to dismissals of employees, etc. were participated in by the department before the Civil Service Commission.

54 actions were commenced for the Lighting Department, involving unpaid light and power bills. Judgments in favor of the City, including costs, amounted to $1,533.90. In addition thereto, a considerable amount of past due accounts were collected without litigation.

79 garnishments were answered.

II.

CLAIMS.

	Number	Amt. Involved
Claims for damages under investigation December 31, 1939, ...	1418	$3,000,740.14
Claims for damages referred to this department for investigation Dec. 31, 1939, to Dec. 31, 1940, ...	1461	1,455,636.02

Claims disposed of as follows:

	Number	Amt. Claimed	Amt. Paid
Settled	647	$386,329.07	$58,427.47
Rejected	523	1,253,074.81	
	1170	$ 639,403.88	

Claims pending Dec. 31, 1940, 1709 $2,816,972.46

Twenty-four of above settled claims were in suit and settled in conjunction with Claim Agent.

Amount involved	$174,753.76
Amount of Settlement	11,111.39

Number of street railway accident reports investigated Dec. 31, 1939, to Dec. 31, 1940, ... 4660

Number of circulars and letters mailed in connection with investigation of foregoing claims and reports, .. 9322

Aggregate settlements and judgments against the City in connection with the transportation system are remaining at a steady but lowering level. Percentage of gross receipts paid out for these items:

1938	2.29%
1939	2.19%
1940	2.00%

III.

POLICE COURT PROSECUTIONS AND APPEALS.

During the year 1940 the City Attorney prosecuted some 76,553 cases in the Police Court, resulting in the imposition and collection of fines and forfeitures in the amount of $286,235.70. 63,148 of these cases involved traffic violations. The total number of cases handled is an increase of 4,853 from that of the previous year and the fines and forfeitures increased $4,665.63.

This number of police court prosecutions results in a considerable number of appeals to the Superior Court by persons convicted. It has been necessary to continue an Assistant Corporation Counsel (Mr. McGillivray) in the prosecution of this appeal work. Mr. McGillivray has given most of his time to this work during the year 1940, with very gratifying results.

Vigorous action on these appeals has been taken by this department, although the law places the burden on the appellant, with the result that at the end of the year 61 police court appeals were tried and otherwise disposed of. In 33 cases convictions and pleas of guilty were entered. 9 appellants were acquitted and in 19 cases appeals were dismissed on the City's motion because of the failure of the persons convicted to diligently prosecute their appeals. In all cases of such dismissal the police court sentences were confirmed and the appellants committed to the city jail, except in a few where the bondsmen were unable to produce the appellant and the bonds were forfeited. 30 drivers' licenses were suspended and revoked. A total of $1,242.80 in fines and forfeitures, in addition to jail sentences in many cases, was collected by this department and transmitted to the City Treasurer. A police officer was, at our request, detailed on a part time basis by the Chief of Police to assist us in the service of process, commitment of defendants, etc. His work was of great assistance to the department.

At the close of the year 1940 only 30 police court appeals, all recent, were pending.

Under Chapter 79, Laws of Washington, 1937, modernizing police court appeal procedure, there has been a marked and continued decrease in the number of police court appeals.

IV.

OPINIONS.

During the year, in addition to innumerable conferences with City officials concerning municipal affairs, of which no formal record is kept, this department rendered 87 written legal opinions upon various questions submitted by the several departments of City government.

V.

ORDINANCES, RESOLUTIONS AND MISCELLANEOUS.

The members of the City Council and the Mayor have from time to

time requested this department to prepare, during the period of this report, 365 ordinances and resolutions.

During the year 821 bonds of officials, bidders, contractors, depositaries and others were examined and approved, totaling $4,792,446.98.

At the request of the City Council we prepared 4 resolutions submitting Charter amendments.

Particular matters of interest are as follows:

CIVIL SERVICE CASES, SUPERIOR COURT.

State ex rel. Thos. M. Park v. City, Superior Court Cause No. 319713.

Mandamus to obtain standing as Senior Clerk, Light Department, on basis of actual performance of duties. Relator prior to the P.A.S. reclassification held standing as "Clerk B-3" and was given standing by the Commission under the P.A.S. classification of "Intermediate Clerk". The case is pending.

State ex rel. Chas. H. Craig v. City, Superior Court Cause No. 324475.

Mandamus to compel re-employment and for back salary as Secretary and Chief Examiner, Civil Service Department, Relator, who resigned from said position, claiming he had never lawfully lost same. Pending.

State ex rel. Albert E. Pierce v. City, Superior Court Cause No. 320842.

Action to review the refusal of the Commission to place Pierce in the position of Superintendent of Transportation, Relator contending it was the same position formerly held by him as Superintendent of Railways. Upon trial the Court held that while the positions might be the same the Statute (Ch. 47, Laws of Wash. 1939) had in effect abolished the Civil Service position and created it as a position outside the Civil Service, and dismissed the action. There was no appeal.

State ex rel. Olson v. City, State ex rel. Green v. City.

These two cases, consolidated for the purposes of trial,

commenced by two employees of the Lighting Department to obtain standing as "Account Clerks" after the P.A.S. reclassification had been completed.

The Superior Court held with the Civil Service Commission that the employees who, prior to the reclassification, had the Civil Service standing of "Clerk B-3" were only entitled to standing as "Intermediate Clerks", which was the counterpart of the former position "Clerk B-3". The court further held that even though the employees were performing some or all of the duties of a higher position they could not become entitled to the higher position without promotional examination, as required by the Charter, and that reclassification could not be used to effect a promotion without examination.

State ex rel. Arthur G. Smith v. Elliott, King County Superior Court No. 321614.

In this case Smith, who was on the eligible list for cook, was appointed in 1937 in the Police Department as substitute for another cook who was on leave of absence while acting temporarily as Chief Cook pending an examination for that position. At that time there were in the Department one position of Chief Cook and one position of Cook. This situation continued until January 1, 1940, when by ordinance the position of Chief Cook was abolished and an additional position of Cook created, as well as a part time position of Cook. The Cook who was on leave of absence returned to his original position and the two other positions were filled from the eligible list of Cook, the Department head appointing the first and second men on the list respectively.

Smith contended that by his service he had passed his probationary period and was entitled to preference for one of the positions, claiming in addition to his service under the "substitute" appointment that he had worked six and seven days a week when the ordinance provided five, and that this "extra" service was not substitute service but

constituted service in a vacancy.

The Civil Service Commission overruled his contention and upon certiorari proceedings the Superior Court affirmed their action, holding that during the period there was but one position of "Cook" created by ordinance and there was no vacancy therein, as the incumbent was on leave of absence, and that the so-called "extra" service was voluntary on his part and could not ripen into a probationary period, nor could the substitute service count toward probation. There was no appeal.

CIVIL SERVICE CASES, SUPREME COURT.

State ex rel. L. L. Morris v. City, et al, 105 Wash. Dec. 230.

Action by twelve eligibles on the register for Auto Truck Driver to compel the City to employ them as Auto Truck Drivers, it being their contention that the City was operating some 183 trucks, only 55 of which were operated by regularly qualified Auto Truck Drivers. After a trial lasting several days, in which the Court heard testimony with respect to the actual performance duties of practically all the employees of the City whose duties included the driving of trucks, the trial court concluded that there were in the Light Department "eleven line trucks" operated by "materialmen" and five "dump trucks" on the transmission line patrol stations and driven by miscellaneous employees which should be oporated by Auto Truck Drivers and rendered judgment accordingly. The City appealed and the Supreme Court reversed the judgment and ordered dismissal, holding that as to the eleven line trucks the operation of the trucks was merely incidental to the duties attached to the position of "materialman" and not the controlling duty, and that as to the five dump trucks their operation was only occasional and did not require the maintenance of an Auto Truck Driver to operate them when needed. The Jarrett case, relied upon by plaintiffs and the trial court, was held not to be

controlling, as in that case the City had abolished truck driving positions in name only and continued to operate the trucks with employees of other classifications who did nothing but drive the trucks.

State ex rel. Dunn v. Elliott, 106 Wash. Dec. 333.

This case involved an examination for Captain of Police. After the written examination had been held the Commission, upon protest, determined that certain questions had been graded incorrectly and certain others were controversial and should be eliminated. All papers were regraded in accordance with Rule IV, Sec. 11, Civil Service Rules. Relator, whose relative standing was reduced from 6th to 8th, brought action in mandamus to compel the Commission to place him No. 2 on the eligible list. The trial court held that the action of the Commission in regrading all papers was proper under its rules and that Relator was not entitled to be heard on the other matters complained of because of his failure to file protest and make specific showing as provided by the rules. The Supreme Court, on appeal, affirmed the judgment and distinguished the case from State ex rel. Hearty v. Mullin on the ground that in that case the Commission had, after the identity of the applicants had been known, regraded on a "different basis."

MISCELLANEOUS CASES, SUPREME COURT.

State ex rel. City v. King County, 4 Wash. (2d) 589.

The City began this action mentioned in the 1939 report in November, 1939, to compel the County to make allocation of proceeds of the resale of property acquired by the County through general foreclosure proceedings without first deducting interest on the tax computed to the date when the property was acquired by the County, and without first deducting interest on deferred payments on such property sold on installment contracts. The lower court directed the issuance of a writ compelling the payment of the proceeds with-

out making such interest deductions, and the ruling was sustained in the Supreme Court by a decision filed July 16, 1940. Under the court's decision the county is required to apportion the total proceeds received from any sale of county property to each taxing unit on the basis of the current tax levy.

The importance of the case is seen in the fact that King County now has outstanding more than one million dollars in installment contracts for the purchase of tax property; these contracts bear six per cent. interest, which amounts to $60,000.00 annually.

Before the institution of the action King County claimed the right to the whole of this $60,000; whereas, on the basis of the 1939 levy, which would apply to 1940 sales, the City would receive 21/54ths of the $60,000.00. In addition to this, if the County's claim had been sustained as to the right to first deduct from the proceeds of such sales the amount of interest to the date the County acquired title, the City would have been deprived of several hundred thousand dollars of revenue annually.

Queen City Construction Co. v. City, 3 Wash. (2d) 6, mentioned in the 1939 report, involved claim by the contractor for compensation for construction of a sub-drain beneath the Henderson Street Trunk Sewer on East Marginal Way, to dewater the trench during construction so the work could be done in the dry. Cost of the sub-drain amounted to some $8000. The case was argued on the City's appeal January 11, 1940; a decision reversing the lower court was filed February 23, 1940, the City winning the case.

Arcorace & Coluccio v. City, mentioned in the 1939 report and in which the plaintiffs were appellants, was argued in the Supreme Court, Dept. #2, June 18, 1940. This case involves the tunnel section of the Henderson Street Trunk Sewer, commencing at a point in Henderson Street near 46th Avenue South, west to Empire Way, south along Empire

Way through Dunlap Canyon. The City was sued for the recovery of some sixty-odd thousand dollars, alleged extra work on account of using compressed air in the tunnel on Empire Way for construction purposes - on the theory that the plans and specifications constituted a guaranty that the work could be done without the use of compressed air. No decision has yet been filed.

Seattle v. Rogers, 106 Wash. Dec. 1;
Seattle v. Bartlett, 106 Wash. Dec. 7.

These cases involved prosecutions for violation of Ordinance No. 66974, which prohibited solicitations for charity when those soliciting in or conducting the solicitation were paid from the funds collected. The defendants challenged the constitutionality of the ordinance, on the ground that it excepted the annual campaign of Seattle Community Fund from its terms. Two police and two superior court judges held the ordinance constitutional. One police and two superior court judges held it unconstitutional, as did the Supreme Court on consolidation of the cases for briefs and argument, solely on the ground that the exception above mentioned was invalid.

Arden Farms v. Seattle, 2 Wash. (2d) 640.

This was an action to enjoin enforcement of the ordinance (No.53002) which prohibited the sale of milk which had had its cream line increased by "artificial means". The plaintiff, by adding homogenized cream to bottled milk, produced a cream line from three-quarters to one and one-half inches greater than that in other milk having the same butterfat content. The Supreme Court reversed the lower court and held that the plaintiff's process did not increase the cream line by artificial means.

TELEPHONE RATE HEARINGS.

As stated in the 1939 report, The Pacific Telephone and Telegraph Company on June 22, 1938, filed with the Department of Public Service of Washington tariffs providing for (1) passing on to its

customers municipal occupation taxes and (2) increases in intrastate toll rates. On June 27, 1938, the Company filed tariffs providing for extensive changes in rates and services in the Seattle Exchange, including a metered service. The June 22nd filing was assigned Cause No. F.H. 7160 and the June 27th No. F.H. 7163. The proposed rates were suspended by the Department and hearings thereon ordered. On May 10, 1939, the Company filed tariffs calling for increases in exchange rates in the State other than in Seattle and this was assigned Cause No. F.H. 7251. On March 31, 1939, the Department, on its own motion, instigated a general investigation of the rates and practices of the Company and assigned same Cause No. 7229. In November, 1938, King County filed complaints (Cause No. F.H. 7213) against the expenditure of money by the Company in anticipation of the measured service contemplated by Cause No. F.H. 7163.

Hearings were held in F.H. 7160 on July 28th, September 20th and September 29, 1938, and in F.H. 7213 on January 12, 1939. On June 14, 1939, all of the causes were consolidated for hearing and extensive hearings were held thereon beginning June 22, 1939, and finally concluding May 1, 1940, totalling ninety days of actual hearing, with some 500 exhibits and 10,000 pages of testimony. We appeared and participated in these hearings and also appeared at one hearing of the cause filed by the Public Service Departments of Washington, Oregon, California, Idaho and Nevada against the Company before the Federal Communications Commission regarding interstate toll rates.

On July 6, 1940, the Department of Public Service filed its Opinion, Findings and Order in the consolidated cases, permanently suspending all of the filings and ordering the Company to cancel same. It retained jurisdiction in Cause No. 7229 (its own case) "to issue such order or orders in said cause as shall be proper".

On October 31, 1940, the Department of Public Service, without holding further hearings, filed its Opinion, Findings and Order in Cause No. F.H. 7229 directing the Company to file rate schedules with-

in 45 days effecting a net decrease in exchange rates throughout the State of $1,053,533.00 and an increase in intrastate toll rates of $272,563.00, prohibited the use of message registers, except those voluntarily desired by subscribers and ordered that municipal occupation taxes be passed on.

The Telephone Company brought actions in the Superior Court of Thurston County to review all of these orders, except that part of the October 31st order passing on the occupation taxes. The seven cities having occupation taxes brought a similar action to review that part of the order passing on such taxes. All of the actions were consolidated for hearing on December 17, 1940, and arguments were heard thereon from December 17th to 21st, inclusive, in which we participated, representing the cities.

The 45 days provided in the October order having expired, the Department on December 16th filed a supplemental order in Cause No. 7229, fixing a schedule of rates but providing that "all occupation taxes, franchise and other similar municipal charges" might be passed on by the company to its subscribers. The Company brought action to review all of said order except passing on the municipal taxes and charges, and the seven cities, now joined by eight others who were for the first time affected by the December order, brought an action to review that portion of said order passing on the taxes and charges.

By stipulation it was agreed that the question presented by the latter cases might be covered in the briefs being filed in the other review cases and all cases were consolidated. The matter is now pending under advisement by the Superior Court. Whatever decision is given by the Superior Court will undoubtedly be appealed to the State Supreme Court. Meanwhile the putting in effect of all rates is suspended until the judgment of the Court is given.

Re: Pacific States Lumber Co. Bankruptcy.

The Pacific States Lumber Company, which was logging in the Cedar River Watershed, was adjudicated a bankrupt October 5, 1939. At that time it was indebted to the City for timber cut and removed under its contract in the sum of $21,058.94. This amount was secured by the performance bond in the sum of $25,000.00, filed under the contract with United Pacific Insurance Company, as surety. We filed a secured claim in the bankruptcy proceedings for $21,058.94, with interest at 6% from October 5, 1939. It developed that the United Pacific Insurance Company held cash collateral in the full amount of the bond and that the trustee desired to remove and realize upon a quantity of timber which had been cut but not removed prior to the adjudication. We took the position that said timber remained the property of the City until paid for, and refused to allow said timber to be removed unless prior payment therefor was made.

The matter was finally settled by the Bonding Company paying the City on March 18, 1940, the full amount of the bond, to-wit: $25,000.00, which was segregated as follows:

Principal and interest on City's secured claim	$21,630.95
Prepayment on timber and scalers' salary	3,369.05

The remainder of the timber removed by the trustee was paid for in cash prior to removal, amounting to approximately $2,000.00.

Because of said bankruptcy logging in the watershed has now ceased.

SOLID FUEL REFUNDS.

After the Supreme Court of the State in the case of Pearson v. Seattle, 199 Wash. 217, declared the solid fuel licensing ordinances (Nos. 65841 and 67614) unconstitutional, a great majority of

the fuel dealers commenced suits or filed claims to obtain a refund of the fees paid under said ordinances.

In accordance with the policy of the City, most of the suits and claims were settled on a basis of a 75% refund of the fees which were not barred by the three year statute of limitations. The refunds amount to the sum of approximately $34,300.00.

Vinup & Crawford v. City.

This case involves the validity of the "Gas Station License" fee of $7.50 per annum on each gas pump or measuring device, as contained in the City License Code. It was contended that the State had preempted the field of taxation and prohibited the City from levying a license fee for revenue purposes by the enactment of Chapter 58, Laws of 1933 (State Gas Tax Act), Sec. 23 of which reads as follows:

> "Tax exclusive and in lieu of other tax. The tax herein levied is in lieu of any excise, privilege or occupational tax upon the business of manufacturing, selling or distributing motor vehicle fuel, and no city, village, town, county, township or other subdivision or municipal corporation of the state shall levy or collect any excise tax upon or measured by the sale, receipt, distribution or use of motor vehicle fuel."

The trial court found for the plaintiffs and the case is now on appeal to the State Supreme Court.

State ex rel. Lumpter v. Collier, King County Superior Court Cause No. 315412.

This action was instituted in August, 1939, to compel the City Treasurer to pay towards the discharge of assessments on account of Aurora Avenue certain sums in accordance with the allocation made by the Legislature on account of such assessments, by Chapter 181, Laws of 1939.

The City Treasurer answered that no sums had ever been received by him from the State for the purpose of making such payments, and also that State officials had expressly declined to make payment

on the ground that the legislative allocation for Aurora Avenue assessments was unconstitutional.

The action was set for trial but, at the request of the relators, the trial was postponed several times and the case was finally dropped from the trial calendar and never brought on for hearing.

Napier v. Runkel, King County Superior Court Cause No. 317192.

The action was commenced in November, 1939, to quiet title to property purchased by the plaintiff from King County through a resale by the county of tax-acquired property. The City was made a party defendant because of certain local improvement assessments against the property which would be valid if the County resale of the property was defective, and would be invalid if the County resale were legal.

The position taken by the City was that the County, having taxed the property and resold it according to an unrecorded plat only, without a metes and bounds description, the resale was ineffective to pass any interest to the plaintiff or cut off the lien of the assessments. The position of the City was sustained in the trial court and the plaintiff appealed to the Supreme Court, where the case was argued on February 11, 1941, but there is no Supreme Court decision as yet.

CONCLUSION.

The 1940 Budget of the Law Department was $63,582.00, which was barely sufficient.

The fact that the department was able to function so effectively, as is indicated in this report, with such a comparatively low budget, is a tribute to the industry, efficiency and loyalty of the personnal.

Respectfully submitted,

A. C. Van Soelen.

A. C. VAN SOELEN,
Corporation Counsel.